

No. 48499-4-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

PERRY D. SIPE  
Appellant

v.

MELISSA L. SIPE,  
Respondent

---

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

---

CORRECTED OPENING BRIEF OF APPELLANT

---

JASON BENJAMIN, WSBA No. 25133  
LAW OFFICES OF BENJAMIN & HEALY, PLLC  
Attorneys for Appellant  
1201 Pacific Ave, Ste C7  
Tacoma, WA 98402  
(253) 512-1140

## TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR.....	1
II.	ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.....	1
III.	STATEMENT OF THE CASE.....	1
IV.	STATEMENT OF FACTS .....	2
V.	LEGAL AUTHORITY AND ARGUMENT.....	3
VI.	CONCLUSION.....	7

## TABLE OF AUTHORITIES

### Washington Cases

<u>In re the Marriage of Cota</u> , 177 Wn. App. 527 (Div II, 2013),.....	3,6
<u>In re Marriage of Major</u> , 71 Wn. App. 531 (Div I, 1993).....	3
<u>In re Marriage of Gimlett</u> , 95 Wn.2d 699 (1981).....	3,4,6
<u>Balch v. Balch</u> , 75 Wn. App. 776 (Div II, 1994),.....	3,4,5,6,7
<u>In re Marriage of Sagner</u> , 159 Wn. App. 741 (Div I, 2011), <i>review denied</i> , 171 Wn.2d 1026 (2011),.....	4
<u>Rains v. Dep't of Soc. &amp; Health Servs.</u> , 98 Wn. App. 127 (Div III, 1999),.....	4
<u>In re Marriage of Gillespie</u> , 77 Wn. App. 342 (Div III, 1995),.....	4,5
<u>In re Marriage of Nielsen</u> , 52 Wn. App. 56 (Div II, 1988),.....	5

### Statutes, Rules & Other Authorities

RCW 26.09.170.....	3,5,6
--------------------	-------

### **I. ASSIGNMENTS OF ERROR**

The trial court erred by ruling that because the petition for post-secondary support was filed after the child turned 18 but prior to graduating high school that the petition must be dismissed despite the fact that support continued until the child graduated from high school.

### **II. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR**

Did the trial court err by ruling that because the petition for post-secondary support was filed after the child turned 18 but prior to graduating high school that the petition must be dismissed despite the fact that support continued until the child graduated from high school.

### **III. STATEMENT OF THE CASE**

Because the Order of Child Support continued support until the child turned 18 or graduated from high school, whichever is later, was sufficient notice to the payor that the child support obligation may continue after majority, that the court had the authority and jurisdiction to order a post-secondary support obligation despite the fact that paragraph 3.14 stated, "The right to petition for post-secondary educational support is reserved so long as the right is exercised prior to the child turn age 18." CP 151, lines 20-21.

#### IV. STATEMENT OF FACTS

Pursuant to the dissolution of marriage of Perry and Melissa Sipe a final order of child support was entered on March 26, 2013. CP 148. One of their children is Sidney Sipe who was born 09/09/1996. CP 4. Sidney turned 18 years old on 09/09/2014. She graduated from high school in June 2015. CP4 and RP 8, lines 15-16.

The Order of Child Support entered by the Pierce County Superior Court on 03/26/2013 stated in regards to Post-Secondary Support at Paragraph 3.14:

***The right to petition for post-secondary support is reserved so long as the right is exercised prior to the child turning age 18.***

CP 151, lines 20-21.

However, in regards to "Termination of Support" in general, the OCS states at paragraph 3.13:

***Support shall be paid until each child reaches 18 or graduates from high school, whichever is later, but not after age 18, except as otherwise provided below in Paragraph 3.14.***

CP 151, lines 16-18.

On May 5, 2015, after Sidney turned 18 but before she graduated from high school, Perry Sipe filed Petition for Modification of Support in Pierce County Superior Court seeking post-secondary support from his ex-wife and mother of Sidney, Melissa Sipe. CP 85-88.

Sidney had been accepted into an accredited post-secondary school, Rocky Mountain College. CP 2. Sidney was a good student in high school. CP 4.

On January 22, 2016, the trial court dismissed the petition for post-secondary support based upon the fact that the petition was filed after Sidney Sipe turned 18 even though she had not yet graduated from high school. RP 9-10.

## **V. LEGAL AUTHORITY AND ARGUMENT**

Because paragraph 3.13 of the Order of Child Support did not terminate support until Sidney graduated from high school, the court had the jurisdiction and authority to order Melissa Sipe to pay post-secondary support for Sidney despite the fact that paragraph 3.14 stated that post-secondary support needed to be exercised prior to the child turning age 18.

An analysis of this issue is set forth in In re the Marriage of Cota, 177 Wn. App. 527, 533-534 (Div II 2013):

Anthony argues that the trial court did not have jurisdiction to award postsecondary educational support because at the time Regina made the request, Annamarie had reached age 18. However, the trial court clearly had *jurisdiction* to address postsecondary educational support. In re Marriage of Major, 71 Wash.App. 531, 533–36, 859 P.2d 1262 (1993). At issue here is whether the trial court had *authority* to order postsecondary educational support in light of RCW 26.09.170(3). See Major, 71 Wash.App. at 536, 859 P.2d 1262.

RCW 26.09.170(3) provides: "Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child." For purposes of this statute, "emancipation" refers to the age of majority—18. In re Marriage of Gimlett, 95 Wash.2d 699, 702–04, 629 P.2d 450 (1981). If a decree does not provide for post-majority support, a party must file a motion to modify to add such support before the child turns 18. Balch v. Balch, 75 Wash.App. 776, 779, 880 P.2d 78 (1994). Conversely, if a decree expressly provides for post-majority support, a court may modify such support as long as the movant files a motion to modify before the "termination of support". Balch, 75 Wash.App. at 779, 880 P.2d 78.

Here, it is undisputed that the trial court entered its order requiring post-majority support after Annamarie turned 18. Therefore, the question is whether, under the child support order in effect when Annamarie turned 18, Anthony's support obligation had terminated when Regina filed her motion to modify. If such support had not terminated, the motion was timely.

"Interpretation of a child support order is a question of law that we review de novo." In re Marriage of Sagner, 159 Wash.App. 741, 749, 247 P.3d 444, *review denied*, 171 Wash.2d 1026, 257 P.3d 664 (2011). In determining whether the child support order authorizes an award of postsecondary educational support, we look to whether "the support-paying parent has notice that the support obligation will extend past the age of majority." Rains v. Dep't of Soc. & Health Servs., 98 Wash.App. 127, 137, 989 P.2d 558 (1999) (citing Balch, 75 Wash.App. at 780, 880 P.2d 78). The rationale for requiring post-majority support to be expressly provided in a decree is that the support-paying parent must be "given advance notice of the termination date or event, rather than being forced to wait for some elusive or fortuitous date of the dependency cessation." Gimlett, 95 Wash.2d at 703, 629 P.2d 450.

Where the terms of a dissolution decree clearly state that support terminates upon the occurrence of specific events, courts have held that the trial court lacked authority to consider a postsecondary educational support award. In re Marriage of Gillespie, 77 Wash.App. 342, 347–48, 890 P.2d 1083 (1995). In Gillespie, the dissolution decree provided that support would continue until the child “shall reach the age of eighteen (18) years, shall marry, shall become self-supporting or shall no longer be dependent upon the wife.” 77 Wash.App. at 344, 890 P.2d 1083 (emphasis omitted) (internal quotation marks omitted). After the child turned 18, the mother filed a petition to modify the decree to provide for postsecondary educational support. Gillespie, 77 Wash.App. at 344, 890 P.2d 1083. Division Three of this court held that the trial court did not have authority to modify the decree because the support obligation had terminated when the child turned 18 under the conditions in the decree. Gillespie, 77 Wash.App. at 347–48, 890 P.2d 1083.

However, the result is different if an order expressly extends support beyond the age of majority. In Balch, the dissolution decree provided that “the children shall be supported until they are no longer in need of support.” 75 Wash.App. at 780, 880 P.2d 78 (internal quotation marks omitted). The trial court declined to consider an award for postsecondary educational support because the child had reached the age of majority at the time the modification petition was filed. Balch, 75 Wash.App. at 778, 880 P.2d 78. This court reversed, holding:

Although this stipulated language lacks precision as to the duration and nature of child support, it clearly expresses an intention to continue child support beyond majority if [the child] remained dependent in fact. See RCW 26.09.170(3). Further, the language is sufficient to put the payor parent on notice that the child support obligation may continue after majority.



Balch, 75 Wash.App. at 780, 880 P.2d 78. The court concluded that the decree language was “ ‘sufficiently explicit’ ” under RCW 26.09.170(3) to allow the imposition of postsecondary educational support.

Balch, 75 Wash.App. at 780, 880 P.2d 78 (quoting In re Marriage of Nielsen, 52 Wash.App. 56, 60, 757 P.2d 537 (1988)).

Here, both the original decree and the 2010 modification order expressly provided that support would terminate when the child turned 18 (or graduated from high school if later) *except* for postsecondary educational support. The 2010 order did not state the amount of postsecondary educational support or when the support obligation would end, but it clearly did contemplate that support would continue beyond the age of 18. The trial court reserved for the future the determination of whether postsecondary support would be appropriate and, if so, the specific amount. And by referencing postsecondary educational support and reserving ruling for a future date, the order put the parents on notice that their support obligations could continue past the age of majority. Gimlett, 95 Wash.2d at 703, 629 P.2d 450; Balch, 75 Wash.App. at 780, 880 P.2d 78.

Because the modification order “otherwise ... expressly provided” as required in RCW 26.09.170(3) that the postsecondary educational support obligation would not terminate when Annamarie turned 18, Regina filed her motion to modify before support terminated as required in Balch 75 Wash.App. at 779, 880 P.2d 78. Accordingly, the trial court had authority under RCW 26.09.170(3) to modify its previous order and award postsecondary educational support.

Our holding would be the same even if the modification order had not expressly extended postsecondary educational support beyond the age of majority. Regina filed

a motion before Annamarie turned 18 requesting that the trial court award postsecondary educational support. The trial court reserved ruling on the issue because it was premature. To preclude Regina from requesting postsecondary educational support after Annamarie reached age 18 when the trial court ruled that the issue was premature at age 17 would be inequitable. Accordingly, we hold that the trial court's pre-majority ruling that the issue of postsecondary educational support was reserved for a later date did not foreclose the trial court from ruling on the issue after the child reached the age of majority.

In re the Marriage of Cota, 177 Wn. App. 527, 533-534 (Div II, 2013).

In the case at bar, Melissa Sipe was on notice pursuant paragraph 3.13 that support "shall be paid until the child reaches 18 or graduates from high school, whichever is later, but not after age 19, except as otherwise provided below in Paragraph 3.14." CP 151, lines 16-17. Accordingly, pursuant to Cota and Balch, because support had not terminated prior to Perry Sipe filing his petition for post-secondary support, Melissa Sipe was on notice that the child support obligation may continue after majority and the trial court had the authority to award post-secondary support.

Additionally, public policy would support a broad and liberal interpretation in favor of an award of post-secondary support for obvious reasons.

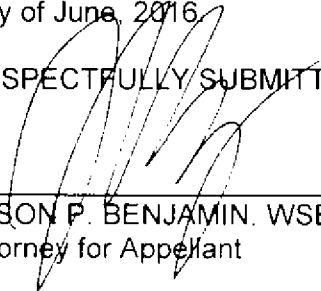
## **V. CONCLUSION**

Based upon the foregoing, Perry Sipe respectfully requests that the trial court's order dismissing his petition for post-secondary

support be reversed and the case remanded for proper determination of what post-secondary support should be awarded.

Dated this 16<sup>th</sup> day of June, 2016

RESPECTFULLY SUBMITTED.



---

JASON P. BENJAMIN, WSBA#25133  
Attorney for Appellant

# CERTIFICATE OF SERVICE

I certify that on the 5<sup>th</sup> day of July, 2016, I caused a true and correct copy of this Corrected Opening Brief of Appellant to be served on the following in the manner indicated below:

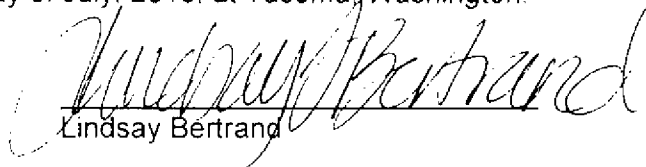
Counsel for Respondent  
Frank Richard Ricketts, Jr.  
PORTAL VIA COA UPLOAD  
Attorney at Law  
1130 Broadway, Ste 202  
Tacoma, WA 98402-3512

E-SERVICE

Appellant  
Perry Sipe  
[perryselite@hotmail.com](mailto:perryselite@hotmail.com)

Email

DATED this 5<sup>th</sup> day of July, 2016, at Tacoma, Washington.

  
Lindsay Bertrand

## BENJAMIN & HEALY PLLC

**July 05, 2016 - 2:02 PM**

### Transmittal Letter

Document Uploaded: 5-484994-Corrected Opening Brief of Appellant.pdf

Case Name: Sipe v. Sipe

Court of Appeals Case Number: 48499-4

**Is this a Personal Restraint Petition?** Yes ☐ No ☒

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: \_\_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

☒ Other: Corrected Opening Brief of Appellant

### Comments:

No Comments were entered.

Sender Name: Lindsay Chappius - Email: [lindsay@attorneys253.com](mailto:lindsay@attorneys253.com)

A copy of this document has been emailed to the following addresses:

[richard@richardricketts.com](mailto:richard@richardricketts.com)